



## INDEPENDENT SECTOR

February 4, 2004

RECEIVED  
FEC MAIL  
OPERATIONS CENTER

2004 FEB -4 P 12:40

*The national leadership forum  
fostering private initiative  
for the public good*

1200 Eighteenth Street, NW  
Suite 200  
Washington, DC 20036  
202-467-6100  
fax 202-467-6101  
www.IndependentSector.org  
Info@IndependentSector.org

John R. Seffrin  
*Chair*

Gary L. Yates  
*Vice Chair*

Paula Van Ness  
*Treasurer*

Christopher Gates  
*Secretary*

Diana Aviv  
*President and CEO*

*Board of Directors*

Edward H. Able, Jr.  
Angela Glover Blackwell  
Kathleen W. Buechel  
Hodding Carter III  
Robert W. Edgar  
David Eisner  
Lewis M. Feldstein  
David Ford  
Barry Gaberman  
Brian Gallagher  
Marilda Cándara  
Peter B. Goldberg  
Darell Hammond  
The Reverend J. Bryan Hehir  
J.D. Hokoyama  
Kevin Klose  
Kathleen D. McCarthy  
Gabriella E. Morris  
Karen Narasaki  
Hilary Pennington  
Michael Rubinger  
Mary Beth Salerno  
Donald M. Stewart  
William Trueheart  
Cass Wheeler

The Honorable John W. Gardner  
(1912-2002)  
*Founding Chair*

Brian O'Connell  
*Founding President  
and President Emeritus*

Peter B. Goldberg  
*Immediate Past Chair*

Commission Secretary  
Federal Election Commission  
999 E Street, NW  
Washington, DC 20463

Re: Draft Advisory Opinion 2003-37

Dear Commission Secretary:

INDEPENDENT SECTOR, a coalition of nearly 700 charitable nonprofit organizations, philanthropic foundations, and corporate giving programs, is writing to express our strong concern regarding the scope and implications of the General Counsel's draft Advisory Opinion 2003-37 prepared in response to a request by Americans for a Better Country ("ABC").

The majority of our members are organized as nonprofit corporations under state law and are exempt from federal income taxation under sections 501(c)(3) of the Internal Revenue Code. Most are actively engaged in educating the public and advocating positions on legislative and policy issues related to their charitable missions, often referencing current elected federal officeholders who have supported or opposed those positions – activities that the Commission noted in its October 23, 2002 rules on "electioneering communications" are considered by the public to be "highly desirable and beneficial."

Although this advisory opinion is given in response to a request from a political committee, many of the activities that the opinion would treat as expenditures under the Act seem strikingly similar to activities of 501(c)(3) and 501(c)(4) organizations that had not been previously treated as expenditures, including activities more appropriately characterized as lobbying or fundraising or nonpartisan voter activation. In its attempts to regulate these activities of political committees, it is critical and essential that the Commission clarify this will not apply to legitimate, nonpartisan activities by 501(c) organizations.

Effective advocacy work generally requires references to the elected officials who have sponsored or led efforts to support or oppose particular legislation, yet this opinion appears to define any communication that includes criticism or praise of an elected federal official who is running for re-election as an expenditure that is subject to FECA rules.

As the Commission recognized in its BCRA rulemaking [add citation to 501(c)(3) exemption from electioneering communications provisions], federal tax law requires that 501(c)(3) organizations refrain from any indication of support or opposition for candidates, and thus any ruling that legitimate 501(c)(3) activities might also be an expenditures under the Act would create



**enormous complications for charitable organizations seeking to comply with both tax and election laws.**

**We share the concerns expressed in comments submitted by a coalition of nonprofit organizations including the Alliance for Justice, Leadership Conference on Civil Rights, League of Conservation Voters, NAACP, NARAL Pro-Choice America, People for the American Way, Planned Parenthood Federation of America, and Sierra Club. We are particularly troubled by the suggested restrictions on voter registration efforts and fundraising communications, and the implied prohibition on contributions by foreign nationals to any nonprofit organizations engaged in voter registration, get-out-the-vote and other activities in connection with a federal, state, or local election for public office. These nonpartisan activities are vital to increasing civic participation by all citizens. Given the disturbingly low levels of participation by qualified citizens in the elections, encouraging greater participation is an important responsibility of our voluntary organizations.**

**For all of these reasons, we strongly urge the Commission not to issue the draft opinion in its present form. Please feel free to contact me or our Vice President for Public Affairs, Patricia Read, if you have questions or would like further information.**

**Respectfully submitted,**



**Diana Aviv  
President  
INDEPENDENT SECTOR**

**cc: Commissioner Ellen L. Weintraub  
Commissioner Bradley A. Smith  
Commissioner David M. Mason  
Commissioner Danny L. McDonald  
Commissioner Scott E. Thomas  
Commissioner Michael E. Toner**